

### V. REMARKS

Claims 17-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The claims are amended to obviate the rejection. Withdrawal of the rejection is respectfully requested.

Claims 17-22 are rejected under 35 USC 103 (a) as being unpatentable over Nishikawa (JP 2000-300729). The rejection is respectfully traversed.

First, with regard to the Examiner's attention to an apparatus claim based on function versus structure, the Examiner alleges that the claim recites language for the intended employment, i.e., intended use, of the invention. It is respectfully submitted that this is not the case. Indeed, the functional claim language in the present invention defines the claimed features by what they **do** rather than what the claimed features **are**. The recited functional claim language does not describe the intended use of the claimed invention. Functional language does not, in and of itself, render a claim improper or indefinite (*In re Swinehart*, 439 F.2d 210, 169 USPQ 226, 229 (C.C.P.A. 1971). In fact, the CCPA in *In re Swinehart* has stated that:

There is nothing intrinsically wrong with the use of such a technique in drafting patent claims. Indeed we have even recognized in the past the practical necessity for the use of functional language [in claims].

With regard to the substantive rejection of the claims under 35 U.S.C. 103 (a), it is respectfully submitted that the claims are not obvious from Nishikawa (JP2000-300729). The difference between the present invention and Nishikawa is as follows:

Nishikawa does not disclose the stop order, so the determination device which determines whether or not the order of the stop control has been performed in the correct order, is neither disclosed nor suggested. On the other hand, the gaming machine of the present invention comprises the above determination device and the shielding device, so more complex shielding is provided. In the present invention, the

shielding device shields according to the determination of the above determination device.

Furthermore, in Nishikawa, the entry of a stop order table and the designation of a correct order are not disclosed. However, in the present invention, the gaming machine comprises a lottery device, a lottery outcome device and a shielding device. Therefore, the shielding device shields according to the execution of the lottery device and the lottery outcome device.

It is respectfully submitted that the applied art fails to teach or suggest the features of the claims as amended and discussed above. Thus, it is respectfully submitted that one of ordinary skill in the art could not modify the features of the applied art to arrive at the claimed invention because the applied art is devoid of all the features of the claimed invention. As a result, it is respectfully submitted that the claims are allowable over the applied art.

It is respectfully submitted that the applied art fails to teach or suggest the features of the claims as amended and discussed above. Thus, one of ordinary skill in the art would not be motivated to combine the features of the applied art because such combination would not result in the claimed invention. As a result, it is respectfully submitted that claims are allowable over the applied art.

Withdrawal of the rejection is respectfully requested.

Further, Applicant asserts that there are also reasons other than those set forth above why the pending claims are patentable. Applicant hereby reserves the right to submit those other reasons and to argue for the patentability of claims not explicitly addressed herein in future papers.

In view of the foregoing, reconsideration of the application and allowance of the pending claims are respectfully requested. Should the Examiner believe anything further is desirable in order to place the application in even better condition for

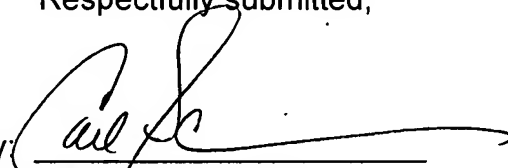
allowance, the Examiner is invited to contact Applicant's representative at the telephone number listed below.

Should additional fees be necessary in connection with the filing of this paper or if a Petition for Extension of Time is required for timely acceptance of the same, the Commissioner is hereby authorized to charge Deposit Account No. 18-0013 for any such fees and Applicant hereby petition for such extension of time.

Respectfully submitted,

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By:



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Enclosure(s):      Amendment Transmittal